

**Ralph Nader**

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December 15, 1997

To: Cynthia L. Johnson, Director  
Cash Management Policy and  
Planning Division  
Financial Management Service  
U. S. Treasury Department

From: RALPH NADER

*Ralph Nader*

RE: REGULATIONS TO IMPLEMENT CONVERSION  
FROM PAPER CHECKS TO ELECTRONIC PAYMENTS  
31 CFR Part 208

#### **BACKGROUND**

Section 3100(x) of the Debt Collection Improvement Act of 1996 amends 31 U.S. C. 3332 to require that all agencies (except the Internal Revenue Service) make payments to eligible recipients electronically rather than by check after January 1, 1999.

The implementation of the mandate is complicated by the fact that more than 10 million recipients of federal payments do not have accounts at depository institutions to which the payments can be made by electronic means.

As a result, the Congress instructed that recipients who certify they do not have accounts be provided access to accounts at a "reasonable cost" and with all consumer protections relating to deposit accounts.

#### **INADEQUACIES OF PROPOSED TREASURY RULE**

The proposed rule, published in the Federal Register on September 16, suggests that the Treasury Department plans to allow depository institutions to define "reasonable costs" through a bidding process.

Under this process, one or more federally-insured financial institutions would be selected to act as the Treasury's "financial agent" for the provision of the accounts for currently unbanked recipients of federal payments.

The definition of "reasonable costs" would be left to a

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banking industry that has a well-documented history of arbitrarily increasing fees on hundreds of banking products. As the Wall Street Journal pointed out in its December 12 edition, fees imposed on consumers are a major factor in the record profits being posted by banking corporations quarter after quarter.

The most likely bidders to serve as the Treasury's financial agent in different regions of the country will be large banks which have been identified by U. S. Public Interest Research Group (PIRG) as by far the worst offenders in gouging consumers with excessive fees.

Treasury is either disingenuous or naive if it is suggesting that these banks will submit bids on providing these new depository accounts that would be substantially lower than charges it levies against current customers for the same services.

Many of the citizens forced into the banking system under the new law will be senior citizens, the disabled, and low income families who do not have surplus funds with which to feed the banking industry's insatiable appetite for fees.

For the more affluent, the myriad of fees on everything from ATM machines to simple account inquiries may be considered only irritating and costly nuisances, but for working families struggling on small incomes the fees literally take food off the table.

The Treasury Department is abandoning its public responsibilities if it lets the banking industry define "reasonable costs" for providing basic banking services. The Treasury and the public already know the banks' definition--which is whatever they can get away with.

#### **WHY DIDN'T TREASURY COLLECT DATA ON ACTUAL COSTS?**

The Treasury Department has had 20 months to collect data that would help it determine costs that are incurred by banks in providing basic banking services. But, judging from the proposed rule no such information is in hand.

Astonishingly, Treasury complains that gathering and evaluating information about the prices would "impose a heavy administrative burden both on the industry and on Treasury."

Without data on the cost of banking services, how can Treasury properly meet the statutory mandate to ensure that accounts are available at "reasonable costs?"

Without data, how will the Treasury be able to evaluate the

bids that may be submitted by various banks?

Without data, how can Treasury determine the degree to which non-depository institutions should be utilized to meet the mandate of "reasonable costs?"

Treasury should withdraw the regulations until it has certifiable data which it makes available to the Congress and the public. Otherwise, the exercise about "reasonable costs" is just a charade.

Such analysis of costs should be performed by independent sources such as the General Accounting Office. The project should not be left to federal regulatory agencies which have taken a cavalier "see no evil" attitude toward the rising tide of fees imposed on bank customers--a tide now estimated to exceed \$16 billion annually.

In approving the recent merger of First Union and Signet banking corporations, for example, both the Federal Reserve and the Office of the Comptroller of the Currency dusted off consumer complaints about excessive fees as just part of the free market process. Similarly, these agencies quickly tossed aside protests about First Union's heavy handed policy of fingerprinting check cashers, a practice which suggests the unfriendly bank environment that first-time account holders will find themselves in when Treasury's EFT program takes effect.

#### **CORPORATE WELFARE SHOULD BE CONSIDERED IN DETERMINING REASONABLE COSTS.**

The rationale for conversion from paper to electronics is based, at least in part, on the theory that the federal government will save \$100 million or more annually in costs out of total outlays of \$1.6 trillion.

The banking industry is heavily subsidized and protected by the federal government. This factor should be considered in offsetting any costs that the banks might incur in helping their government save money on the disbursement of funds to eligible recipients.

A few examples:

1. Banks (except for a handful of risky operators) receive free taxpayer-backed deposit insurance. Deposit insurance is the glue that holds the banking industry together and provides it with an immense advantage over its non-insured competitors.

2. Banks have ready access to below-the-market interest rate

loans from the discount window of the Federal Reserve Banks.

3. The Federal Reserve provides payment services, such as check clearing and transport, at subsidized rates.

4. Big interstate banks and large regional institutions enjoy the status of "too big to be allowed to fail." These corporations are certain to be given taxpayer bailouts if they should fall on bad times--a fact which attracts both depositors and investors.

5. Banks enjoy a benevolent federal and state regulatory system which examines and certifies the safety and soundness of the institutions--again a comforting factor which helps hold and attract depositors and investors.

6. Banks also enjoy the services of bank regulators and officials of the Treasury Department who regularly appear before the Congress and public forums to promote new products and powers for the industry.

7. Banks receive large government subsidies in the form of fees and guarantees on many of their profitable loans, particularly for housing, education, small business and exports.

These subsidies and benefits accorded the banks should be factored into the determination of what would be fair pricing to assist the government in transferring payments to senior citizens, low income persons and other recipients. Where is the Treasury's commitment to customer reciprocity for all these direct and indirect government (i.e. taxpayer) subsidies?

In addition, the Treasury Department should calculate how much income the banks will derive from "float" on the accounts. More than 340 million payments totaling \$250 billion now made by paper checks will be moved electronically into banks.

While many of these accounts will be drawn down quickly as recipients pay for basic necessities, it is reasonable to assume that there will still be significant float remaining on which banks will profit. The potential for profit from the accounts is enhanced by the fact that electronic receipt of the funds will make the banks' administrative costs minimal.

#### **WHAT SHOULD THE BASIC BANKING ACCOUNTS LOOK LIKE?**

1. Taking into consideration the float and the benefits the government provides banks, basic banking accounts should be provided free so long as there are no more than 15 withdrawals per month by check or ATMs. Fees could be imposed to cover actual costs

for additional transactions. Other charges including returned check charges, now managed as a lucrative profit center, should be at cost to the bank.

2. Accounts should be structured so additional deposits could be made beyond the government payment without incurring fees.

3. Recipients should have access to live tellers and should be able to make telephone inquiries about their accounts without paying fees.

4. Recipients should be provided monthly statements covering all transactions, a list of any fees or other charges imposed and copies of canceled checks. (Some banks which now provide so-called basic banking accounts do not return canceled checks and charge up to three dollars per copy if a canceled check is requested.)

5. Holders of basic banking accounts should be provided ATM cards on request, but the accounts should not be limited to access by electronic means through debit or ATM cards.

6. An "800 number" should be provided in each of the federal financial regulatory agencies where recipients can file complaints about fees which exceed "reasonable cost" guidelines to be issued by the Treasury Department. The free number should also be available to seek information about the accounts, to help settle disputes and to determine the responsibility of the banks under the regulations.

7. The regulatory agencies, which have essentially ignored deposit services in examinations, should examine compliance with "reasonable cost" and "consumer protection" requirements of the new accounts. Specific enforcement procedures should be established.

8. All costs, including returned check charges, resulting from errors or accidents in the electronic delivery system should be borne by the government or the bank, not the individual consumer.

9. Waivers which would allow recipients to continue to receive paper checks should be granted to cover not only physical disability,, geographic barriers and financial hardship, but also to take into consideration literacy and language barriers and related problems which the electronic system may impose on individuals.

10. Recipients should have the right to close an account without paying a fee or penalty.

## SUMMARY

The Treasury Department should withhold final regulations until it has determined through independent sources the true "reasonable costs" of providing accounts for unbanked recipients of government payments.

In so doing, the Treasury Department should subtract from these costs the welfare that is provided banking corporations through free deposit insurance, subsidized services and loans from the Federal Reserve System, loan guarantees and fees and related benefits. The net costs should also be balanced by the income that banks will receive from "float" on the new accounts.

If bank welfare and the float are properly accounted for, the result should be free basic bank accounts for recipients with a limited number of transactions.

The accounts should be "full accounts" and not be limited to access through ATM and debit cards. Recipients should have access to live tellers and be able to make telephone inquiries about their money without paying fees.

Waivers for citizens who want to continue to receive paper checks should be granted liberally.

Regulatory agencies should monitor compliance with the "reasonable cost" and "consumer protection" provisions of the law and establish a specific enforcement program.